

BOARD OF BUILDING CODE STANDARDS AND APPEALS MINUTES

September 9, 2013

Members: Francisco Banuelos, Randy Coonrod, Daryl Crotts, Brad Doeden, Randy Harder, Russ Redford, Larry Webb, Gregg Wilhite, Warren Willenberg

Present: Banuelos, Coonrod, Crotts, Doeden, Harder, Redford, Willenberg

Staff Members Present: Tom Stolz, Bud Lett, Richard Meier, Deb Legge, Diane Patton (MABCD); Jeff Van Zandt (City Law); Justin Waggoner (County Law)

The regular meeting of the Board of Building Code Standards and Appeals was called to order by Chairman Coonrod on Monday, September 9, 2013, at 1:00 p.m., at the Wichita Area Builders' Association Offices, 730 N. Main, Wichita, Kansas.

Approval of the August 5, 2013, minutes.

Board Member Willenberg made a motion to approve the minutes for the June 3, 2013, minutes. Board Member Banuelos seconded the motion. The motion carried.

Public Agenda.

There was no one present to speak on the Public Agenda.

Condemnations:

New Cases

There were no new cases for September.

Review Cases

1. 1947 S. Water (Commercial)

The owner, Michael Burke was present on behalf of this property.

This one-story frame commercial building is about 42 x 69 feet in size. Vacant for many years, this structure has a badly deteriorated wood and composition roof with missing shingles; rotted wood siding; rotted framing members; and rotted fascia and wood trim.

Mr. Burke said that he had the deed to the property, he was waiting for the redemption period to expire before he started any rehabilitation on the property.

Janet Fry, a resident in the area that lives diagonally across from 1947 S. Water, asked to speak to the Board. She said the property has been vacant for a number of years. There have been cats living in the building, as well as gang members using the site. During a neighborhood cleanup in April, an entire dump truck was filled with items from that particular property as part of an interior cleaning. The front lawn was mowed and some trees were trimmed, but nothing else was done all summer. Ms. Fry said she had a business card with the owner's name and contact information. She told the Board that she had left a message on the voice mail about two weeks ago asking that they have someone mow the yard. There was no response until the weekend prior to the Board meeting. She emphasized it was an eyesore and a hazard for the neighborhood. During the summer months when the grass was very high, it was difficult to see on coming traffic when trying to turn onto Mt. Vernon. Additionally, the condition of the site is affecting the other property values in the area.

Board Member Harder made a motion that an extension be granted until the December meeting, maintaining the property in a clean and secure condition in the interim. If there are complaints in the meantime regarding the clean and secure state of the site, the Board will review the situation with the possibility of withdrawing the extension and submitting the property to the City Council with a recommendation of condemnation. Board Member Crotts amended the motion, adding that if progress toward rehabilitating the property have not begun by the December meeting, the property will be referred to the City Council for condemnation, and the premise must be mowed every two weeks during the growing season. Mr. Burke will be required to reappear before the Board at the December hearing to report on the status of the property. The motion carried.

2. 2128 W. McCormick

Mr. Richard Martin, husband of the deceased owner, was present.

A one- and one-half story frame dwelling about 69 x 31 feet in size, this structure has been vacant for at least a year. This structure has a badly cracked and shifting concrete foundation; collapsing concrete cellar walls and steps; rotting wood trim; badly shifting, illegally constructed, two-story addition; and the attached carport and 15x20 foot accessory garage are dilapidated.

At the August 5th hearing, the Board approved a motion to allow until the September meeting to acquire ownership or the legal authority from the owners to act on their behalf to either sell the property or present a plan of action for bringing the property into compliance, maintaining the site in a clean and secure condition in the interim.

The 2012 taxes are delinquent in the amount of \$408.62. During a site inspection on the Friday prior to the Board meeting, it was noted that there was tall grass and weeds and some debris on the premises. No repairs had been made at that time. The structure was opened earlier on that day, but Ms. Legge checked the property again in the afternoon and saw that some of the openings had been boarded.

Mr. Martin told the Board that he had spoken with an attorney. He said that the attorney told him it would take at least thirty to forty-five days to obtain legal ownership of the property. The attorney said he would have to receive the requested paperwork from Security Title before he could start contacting the owners on Mr. Martin's behalf. Mr. Martin said he had done quite a bit of work on the yard in the meantime; however, some unknown party had dumped huge chunks of tree debris on the site. Although he has since removed it, Mr. Martin said a new load of debris gets dumped on the property almost as quickly as he can get a load hauled away. He said he has boarded up the doors, but the boards have been pried off. Even though he puts them back on, if the trespassing party can't get the boards off, they break the windows to gain access to the dwelling. As soon as he can get ownership of the property, Mr. Martin said he intends to sell it. He has already been contacted by three interested parties.

Board Member Harder made a motion to allow until the October meeting for Mr. Martin to obtain ownership of the property and reappear before the Board with a plan of action, maintaining the property in a clean and secure condition. Board Member Crotts seconded the motion. The motion was approved.

Unfit for Habitation Cases:

7911 E Champions Ct

The property was damaged by a windstorm in May 2013. The chimney was ripped loose during that storm and has been lying on the roof since that time. Additionally, there have been several periods of heavy rain since the May windstorm, and in the area where the chimney had been torn away, the roof is exposed to the elements. Several violation notices have been issued on the chimney and the hole in the roof; WPD has been involved as well as COM-CARE in trying to get the owner of the property some type of assistance. The owner did not respond to any of the attempts to make contact. Ms. Legge told the Board that a UCC was issued on July 22, 2013, but has not been served to the best of her knowledge. MABCD proceeded with abatement, having the City contractor mow and clean up the tree debris on the site. At the time, the owner was not at the property. On the Friday prior to the Board

meeting, Ms. Legge made a site inspection and reported that the only change has been the mowing.

The 2009, 2010, 2011, and 2012 taxes are delinquent in the amount of \$14,518.40, and the property is now in early tax foreclosure status. There are several years of homeowners' association dues on which the homeowners' association is filing a foreclosure. Mr. Van Zandt told the Board that the owner is not in the home at present.

Jeff Emerson, attorney for Willow Bend Homeowners' Association, Rick Van Tassle, president of the association, and Archie Macias, vice president of the association were present. Addressing the Board, Mr. Emerson said that the property had been a problem structure in Willow Bend for quite some time. He said that the delinquent dues amounted to approximately \$11,000.00. He confirmed that the owner was no longer in the house and added that he had been informed that the owner would not be returning to the residence. He concluded by voicing support, on behalf of the Willow Bend Homeowners' Association, for having the Board declare the property uninhabitable.

Board Member Harder made a motion to declare the property at uninhabitable. Board Member Redford seconded the motion. The motion passed.

Review of Contractor License of Jeffrey T. Vap, License Nos. LICB-02132 (Sedgwick County) and BUS2008-07072 (City of Wichita) and any other licensure within the jurisdiction of the BCSA.

Mr. Jeff Van Zandt, Counsel for the Board of Codes Standards and Appeals, summarized the hearing procedures for the Board, staff, and public in attendance.

Mr. Tom Stolz, Director of MABCD, was sworn in by Chairman Coonrod. Mr. Stolz introduced himself to the attendees and explained that one of his responsibilities as the Director of MABCD is to ensure that all building and trades contractors adhere to current building code standards within the authorized jurisdiction of Sedgwick County and participating municipalities within the County. Whenever there is a breach of the aforementioned protocol, the Director is then responsible to initiate any criminal action, which may be accomplished by a citation issued by a building inspector acting on behalf of the Director, or depending upon the severity of the offense, may include cooperation in any potential further criminal investigation, including law enforcement entities or any formal filings with prosecuting entities within the municipalities or the District Court of Sedgwick County. In addition to that responsibility, the Director brings the transgression before the Building Board of Code Standards and Appeals, who, as a body, has the authority to administratively suspend or revoke the license of the violating contractor.

In the instance regarding Jeffrey T. Vap, a local contractor, he has historically violated several criminal laws as well as sections under Article 2.1.190 of the Unified Code of Wichita-Sedgwick County. Additionally, the District Court of Sedgwick County has previously found Mr. Vap guilty of numerous felony counts surrounding illicit business practices while conducting general contracting work at four different locations within Sedgwick County between October 2011 and April 2012. Separate and distinct from the criminal violations, the Metropolitan Area Building and Construction Department presented to the Board a summary of violations regarding breach of Article 2.1.190 of the Unified Code for actions regarding Mr. Vap's contracting license. Thirty different violations were cited in the complaint and were regarding work that was supposed to be accomplished at four local sites: 120 W. South St., Goddard, Kansas; 433 S. Glendale, Wichita, Kansas; 2234 S. Kansas, Wichita, Kansas; and 214 S. Glenn, Wichita, Kansas.

Mr. Vap's Sedgwick County contractor's license expired on December 31, 2012. The current contractor's license with the City of Wichita is in an inactive status due to an expired certificate of general liability insurance.

Representing MABCD as the department Director, Mr. Stolz requested that the Board, upon hearing the testimony and viewing evidence, permanently revoke Mr. Vap's ability to obtain a contractor's license within the confines of Sedgwick County until such time as he meets three conditions: 1) Mr. Vap must make an application for and passes an examination as required for his original license; 2) Mr. Vap must correct all current violations regarding the matter presented to the Board at the September 9, 2013, hearing to comply with code; and 3) Mr. Vap must appear before the Board of Code Standards and Appeals to show just cause as to why a new license should be granted.

Mr. Van Zandt asked if Mr. Vap or anyone who might be present as a representative for Mr. Vap wanted to make any statement to the Board. Mr. Vap was not present, and no one came forth as a representative for Mr. Vap.

Addressing the Board, Mr. Justin Waggoner, Counsel representing the Metropolitan Area Building and Construction Department, began by noting that Article 2.1.190 requires that any contractor receive five days' written notice mailed to his last known address before the contractor's license is taken before the Board. Also, the Board's adopted policies and procedures for contractor license hearings require that notice be given to the contractor at least fifteen days in advance of the hearing.

Among a number of items submitted to the Board as evidence, Mr. Waggoner presented a Journal Entry of Judgment containing information regarding conviction of Mr. Vap for having committed thefts by deception beyond a reasonable doubt; a condition of Mr. Vap's probation is not to work as self-employed or sole proprietor or an independent contractor during the term of his probation.

Mr. Waggoner called his first witness, Ms. Charlotte Tennent, who was sworn in by Chairman Coonrod. Ms. Tennent testified that she had acted on behalf of her mother (Billie Bell), who wanted to have a bedroom and bathroom addition constructed at Ms. Bell's property at 2234 S. Kansas, Wichita, Kansas. Mr. Vap brought a cutting tool and cut the sidewalk in the back of the property. Ms. Tennent said that after paying Mr. Vap \$8,000 in the form of a cashier's check issued on March 8, 2012, no work on the addition was ever started, and no money was ever returned. When questioned about the money, Mr. Vap told Ms. Tennent that the money had been spent. The first contract from Mr. Vap was on January 6, 2012, a second one on January 14, 2012, and the third contract was signed on March 8, 2012. The purpose of the multiple contracts was due to Mr. Vap's attempt to decrease the contract price.

Once the payment had been made, Ms. Tennent explained that she tried to reach Mr. Vap and often had to leave messages. When she would ask when he intended to begin work on the addition, his standard answer was that he would begin the work later in the week. Ms. Tennent said she finally told Mr. Vap that she was going to take legal action against him. She said his response was that she wouldn't get her money returned because he had already spent it.

Mr. Waggoner called Ms. Nelda J. Hoerman as the next witness. Ms. Hoerman was sworn in by Chairman Coonrod. Ms. Hoerman said she learned about Mr. Vap's contracting business via yard signs in the City of Goddard after several homes sustained damage from a hailstorm in May 2011. Mr. Vap was working in Goddard and advertising in Goddard. Ms. Hoerman said she had seen one of his advertisements that advertised him as a Christian businessman. On September 20, 2011, Ms. Hoerman contracted Mr. Vap to refurbish or replace the deck, replace the trim, replace the roof, and replace the guttering on her home at 120 W. South, Goddard, Kansas. The approximate amount of the original insurance claim for the windstorm damage was \$7,100. Upon learning the amount that the insurance company was going to pay for the repairs, Mr. Vap told Ms. Hoerman he would negotiate the repair costs with her insurance company, and he faxed the insurer a new estimate, almost doubling the original cost estimate. Ms. Hoerman said payment from the insurance company came in two separate checks. After receiving the first check, Ms. Hoerman had her brother repair some of the trim work and guttering; Mr. Vap demanded that Ms. Hoerman pay him (Mr. Vap) the remaining amount of the first check as a down payment. After the second claim check was received from the insurance company, Ms. Hoerman said Mr. Vap demanded he that he receive payment or he would refuse to proceed with the job, or get materials, or deliver materials to the job.

A total payment of \$6,857 was made to Mr. Vap. Ms. Hoerman said she sent a certified letter to Mr. Vap on November 21, 2007, notifying him that she was going to have someone else do the repairs on her home and demanding a full refund of the monies she had paid to him because he had failed to take any action toward making the repairs. The letter was unclaimed and returned to Ms. Hoerman. She sent another letter on December 16, 2011, as a second notice that she was terminating the contract with him and was demanding a full refund of her monies. She said he responded to the second letter by calling her at work and telling her he wanted to resolve the problem. Ms. Hoerman told him she was not interested in pursuing the work with Mr. Vap, and she told him she wanted a full refund of the money that had been paid to him. No permit was ever issued for the job, and no receipts were ever provided to Ms. Hoerman for materials purchased with the money paid to Mr. Vap.

Mr. Vap was convicted in a criminal case in Sedgwick County District Court for theft by deception in which Ms. Hoerman was the victim; Mr. Vap was ordered to pay restitution of \$6,857.70.

Ms. Jennifer Harms was called to testify before the Board. After being sworn in by Chairman Coonrod, Ms. Harms told the Board that she was originally planning to put in a new driveway at 433 S. Glendale, Wichita, Kansas. A few

days later, she decided to reallocate the money toward the roof and some landscaping. The contract for the driveway was superseded by the contract for the roof. Ms. Harms paid Mr. Vap \$6,900. After she had paid him, Ms. Harms stated that Mr. Vap did no work on her property. She said initiated all calls and/or texts to Mr. Vap. Sometimes he would respond to her, and sometimes he did not acknowledge her calls/texts. Whenever he did respond, Ms. Harms said Mr. Vap would always promise to start the work "on Thursday or Friday." Mr. Vap didn't follow through. No permits were issued for Ms. Harms property. On May 16, 2012, Ms. Harms contacted OCI (now MABCD) and was informed that Mr. Vap did not have a valid contractor's license. Mr. Vap delivered seven rolls of roofing paper and a box of nails to Ms. Harms' address. She requested that Mr. Vap not make any more purchases since he did not have a valid license to do the work on her roof, and she asked that he also refund her money. He did not refund her money.

Mr. Michael Melton was called to testify before the Board. After being sworn in by Chairman Coonrod, Mr. Melton stated that he had contracted with Mr. Vap on March 30, 2012, to do work at Mr. Melton's property at 214 S. Glenn, Wichita, Kansas. The amount to be paid for the work was \$3,500; Mr. Melton gave Mr. Vap a cash deposit of \$1,000. Mr. Melton said he called Mr. Vap several times about coming to begin the work, and Mr. Vap's response was that he was busy on another project and running late. Although Mr. Vap did not complete any work on the property, Mr. Melton said, a dump truck and a stolen backhoe was brought to Mr. Melton's property by Mr. Vap. Eventually, Mr. Vap stopped returning Mr. Melton's calls and blocked Mr. Melton's phone number to prevent further calls from him (Mr. Melton). Mr. Melton contacted the company that owned the backhoe to ask if someone there had another means of contacting Mr. Vap. A representative of the rental company that owned the backhoe told Mr. Melton that the backhoe had been missing for several months. The rental company sent a representative to Mr. Melton's property to pick up the backhoe. Neither the dump truck nor the backhoe had been used in conjunction with the contracted work on Mr. Melton's property. Mr. Vap returned to Mr. Melton's property and retrieved the dump truck. Mr. Vap did not provide any documentation to Mr. Melton for any purchases made with the \$1,000 cash deposit. The money was not returned to Mr. Melton.

Mr. Bud Lett, Assistant Director, MABCD, (formerly with Sedgwick County Code Enforcement prior to the merger of the City and County code enforcement entities) was sworn in by Chairman Coonrod. Mr. Lett identified a Certificate of Service that he handed to Mr. Vap on August 20, 2013. Mr. Lett explained that Mr. Vap had allowed the required insurance for his Sedgwick County Contractor's License to lapse, rendering Mr. Vap's license in a suspended status. Prior to the lapse of his insurance, Mr. Vap had obtained permits for work in Sedgwick County. A list of those permits did not include a permit for the work to be done at 120 W. South, Goddard, Kansas. There were permits on the list that had expired without inspections ever having been requested by Mr. Vap. Mr. Vap did not provide the required insurance documentation in 2011, and when the license expired on December 31, 2012, Mr. Vap did not renew that license.

Mr. Richard Meier, Construction Administrator/Building, MABCD, was called to testify by Mr. Waggoner. After being sworn in by Chairman Coonrod, Mr. Meier was asked by Mr. Waggoner to identify a copy the City of Wichita Contractor's License as issued to Mr. Vap. The license was in a suspended status due to a lapse in the required insurance. A list of permits previously issued to Mr. Vap by the City of Wichita, beginning in 2008, totaled thirteen permits, ten of which had not received the necessary inspections. The list did not include any permits issued for the properties at 2234 S. Kansas, Wichita, Kansas; 433 S. Glendale, Wichita, Kansas; or 214 S. Glenn, Wichita, Kansas.

Mr. Waggoner summarized the case against Mr. Vap by bringing to the Board's attention to Mr. Vap's violations of the Wichita-Sedgwick County Unified Building and Trade Code, Article 2.1.190. Those violations include abandoning a contractor without legal causes; diversion of funds or property received for performance or completion of a specific contract or failure, neglect or refusal to use such funds or property for the performance or completion of such contract; fraudulently departed or disregarded plans or specifications in any material respect without consent of the owner or his duly authorized representative; willfully and deliberately disregarded the plans or specifications of the Unified Code; failure to keep records showing all receipts and disbursements for the work completed; committed fraudulent acts of the contractor the consequence of which the victims were injured; failure to obtain permits as required by the Unified Code; failure to complete permits; and failure to follow the Unified Code in general.

Mr. Waggoner reminded The Board that the action recommended by Mr. Stolz was:

- Mr. Vap's aforementioned licenses, with the potential to acquire a new license within the jurisdiction of the MABCD related to work within the purview of the BCSA, be permanently revoked;
- Pursuant to Section 2.1.200(c) of the Unified Code, Mr. Vap not be granted a new license unless and until he: (a) makes an application for and passes an examination as required for the original license; and (b) has appeared before the BCSA to show just cause as to why the new license should be granted.
- Also pursuant to Section 2.1.200(c) of the Unified Code, a new license not be granted until the violations are corrected in accordance with the Code, where feasible.

With no one present to rebut the case against Jeffrey T. Vap, and with no discussion requested by the Board, Chairman Coonrod, having considered the entire record regarding the matter and having heard the evidence as presented to the Board, moved that the Board make the following findings:

- The Board of Code Standards and Appeals has the jurisdiction to hear the complaint pursuant to Article 2.1.190 of the Wichita-Sedgwick County Unified Building and Trade Code;
- That Jeffrey T. Vap was properly notified of the hearing;
- That the Board's findings were based exclusively on the evidence, testimony, and information provided during the hearing;
- The Board adopts allegations contained in the complaint filed by the MABCD staff and the testimony of the witnesses and finds that by a preponderance of the evidence that Jeffrey T. Vap has violated the provisions stated therein.

Based on the foregoing items, Chairman Coonrod moved that the licenses of Jeffrey T. Vap be permanently revoked and that the Board further adopt the recommendations in the complaint as part of the findings.

Board Member Harder made a motion to approve the recommendations in the complaint. Board Member Redford seconded the motion. The motion carried unanimously.

Due to the length of the hearing, Mr. Stolz suggested that final agenda item regarding the discussion of inactive license status and waiver of licensure be delayed until another meeting.

With no other business to conduct, Board Member Harder made a motion to adjourn the meeting. Board Member Willenberg seconded the motion. The motion was approved.

The meeting adjourned.